

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GUILFORD E. NARANJIT and U.S. POSTAL SERVICE,
BULK MAIL CENTER, Capital Heights, MD

*Docket No. 00-2680; Oral Argument Held November 13, 2002;
Issued January 9, 2003*

Appearances: *Stephen H. Chirumbole, Esq.*, for appellant; *Thomas G. Giblin, Esq.*,
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before COLLEEN DUFFY KIKO, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits on the grounds that he refused an offer of suitable work.

Appellant, a 25-year-old mailhandler, filed a notice of traumatic injury on March 17, 1980 alleging that he developed a sprain in the groin area in the performance of duty. The Office accepted his claim on April 3, 1981 for lumbosacral strain and left inguinal hernia. Appellant filed additional claims on March 13, 1981 and March 1, 1982. The Office accepted these additional claims for herniated disc L4-5 and surgery.

By letter dated October 22, 1997, the Office informed appellant that he had received an offer of suitable work and allowed him 30 days to accept the position or offer his reasons for refusal. Appellant did not respond and by decision dated December 1, 1997, the Office terminated his compensation benefits finding that he refused an offer of suitable work.

Appellant requested an oral hearing on December 16, 1997. By decision dated June 30, 2000, the hearing representative affirmed the Office's December 1, 1997 decision.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits.

Section 8106(c) of the Federal Employees' Compensation Act¹ provides that a partially disabled employee who refuses or neglects to work after suitable work is offered to, procured by,

¹ 5 U.S.C. § 8106(c)(2).

or secured for the employee is not entitled to compensation. As the Office in this case terminated appellant's compensation under 5 U.S.C. § 8106(c), the Office must establish that appellant refused an offer of suitable work. The Office has the burden of demonstrating that the employee can work, setting forth the specific restrictions, if any, on the employee's ability to work and has the burden of establishing that a position has been offered within the employee's work restrictions, setting forth the specific job requirements of the position. In other words, to justify termination of compensation under 5 U.S.C. § 8106(c)(2),² which is a penalty provision, the Office has the burden of showing that the work offered to and refused or neglected by the claimant was suitable.³

Appellant's attending physician, Dr. Charles Mosee, a neurosurgeon, completed a work restriction evaluation on July 26, 1996 and indicated that he was temporarily totally disabled. He indicated that appellant's restrictions included sitting, walking, standing and lifting for one hour a day with no bending, squatting climbing, kneeling or twisting. Dr. Mosee indicated that appellant could lift no more than 10 pounds and could not reach or work above the shoulder.

The Office referred appellant for a second opinion evaluation with Dr. Bruce J. Ammerman, a Board-certified neurologist, on October 15, 1996. In his January 3, 1997 report, Dr. Ammerman noted appellant's history of injury and findings on physical examination. He stated that examination of the lumbar spine revealed mild restriction of forward flexion and no spasm or scoliosis with motor and reflex examinations intact. Dr. Ammerman stated that appellant had mild residuals of his lumbar laminectomy and that he could return to work avoiding repeated bending, stooping and lifting over 20 pounds.

To resolve the disagreement between appellant's attending physician, Dr. Mosee and the Office second opinion physician, Dr. Ammerman, regarding the nature and extent of appellant's work restrictions, the Office properly referred appellant, a statement of accepted facts and a list of specific questions to Dr. Arthur I. Kobrine, a Board-certified neurosurgeon, to resolve this issue.⁴ In his July 25, 1997 report, Dr. Kobrine reviewed appellant's history of injury and medical treatment. He noted that appellant walked well on his heels and toes with normal strength, tone, reflex and sensory examination of the lower extremities. Dr. Kobrine stated that appellant had reached maximum medical improvement and that he could return to work with no significant and repetitive periods of stooping, bending, lifting or carrying of objects over 25 pounds.

In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper

² Section 8106(c) serves as a bar to the claimant's entitlement to further compensation for total disability, partial disability or a schedule award for permanent impairment arising out of an accepted employment injury. *Albert Pineiro*, 51 ECAB 310, 13 (2000).

³ *Id.* at 311-12.

⁴ Section 8123(a) of the Federal Employees' Compensation Act, provides: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination." 5 U.S.C. §§ 8101-8193, 8123(a).

factual background, must be given special weight.⁵ Dr. Kobrine's report is based on the proper history of injury and provided medical findings to support his conclusion that appellant was capable of light-duty work. He noted that appellant had normal strength, reflexes and sensory examination of the lower extremity. The Board concludes that Dr. Kobrine's report is entitled to special weight and establishes that appellant could return to light-duty work eight hours a day.

The employing establishment offered appellant a light-duty position of modified mailhandler on August 5, 1997. This position required him to sit for three hours processing rewrap and loose mail pieces weighing no more than five pounds. Appellant was to stand for one hour at a time sorting bundles and alternate these duties. This job required no significant and repetitive periods of stooping, bending, lifting or carrying of objects weighing over 25 pounds. Dr. Kobrine approved this position on August 6, 1997.

On October 10, 1997 the employing establishment further restricted the position to no lifting over 15 pounds and alternating sitting and standing. The Office followed the appropriate procedures in informing appellant that the offered position was suitable. Appellant did not offer any reasons for refusing the position within the 30-day period allotted. The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits for refusing an offer of suitable work.

Following the Office's December 1, 1997 decision, appellant asserted that the position offered was not based on the appropriate salary. At the oral argument he alleged that he was entitled to compensation for the loss of wages he would have incurred had he returned to this position. The Board notes that section 8106(c) of the Act, is a penalty provision and specifically states that if an employee refuses an offer of suitable work he is not entitled to further compensation. The Board had held that this includes future schedule awards as well as compensation for total disability or partial disability arising out of an accepted employment injury.⁶

As the weight of the medical opinion evidence establishes that appellant was capable of performing the offered position and as appellant did not offer any acceptable reasons for refusing the position, the Office met its burden of proof to terminate appellant's compensation benefits.

⁵ *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).

⁶ *Albert Pineiro*, 51 ECAB 310, 313 (2000).

The decision of the Office of Workers' Compensation Programs dated June 30, 2000 is hereby affirmed.

Dated, Washington, DC
January 9, 2003

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member